

Conifer

Memorandum

To: Phil Rassier
From: Gary Spackman *Gary*
CC: Tim Luke
Date: April 19, 2004
Re: Conjunctive Management of ground water and surface water in Basin 34, Big Lost River

IDWR staff anticipates a low water year in the Big Lost River Basin (Basin 34), and some early curtailment of water rights. During low water years, river flows totally disappear at the Darlington Sinks between Mackay and Arco. Some of the earliest priority water rights for the Big Lost River describe points of diversion near Arco. These early priority water rights are no longer deliverable after the stream disappears, resulting in a futile call.

The surface water flows in the Big Lost River and ground water in the Big Lost River Basin are hydraulically connected. The adjudication recognized this connection. Rules were promulgated for the administration of water rights in the Big Lost Basin. These rules are known as "Rules Governing Distribution of Water in Water District 34, the Big Lost Basin." The rules are found in IDAPA 37, Title 03, Chapter 12.

Because of the hydraulic connection between surface water and ground water, Rule 50 governs the "Conjunctive Administration of Ground and Surface Water Rights." Rule 50 recognizes a 13% river depletion resulting from ground water diversions. The rule also describes a procedure for a senior water right to initiate mitigation by the ground water users.

Because of the upcoming low water year, and discussions with surface water users, IDWR believes that a surface water user may request mitigation during 2004 irrigation season. The purpose of this memo is to request a legal analysis of the rules prior to receiving the request. The following are issues I have identified. There may be other issues that could be raised.

1. What is the relationship between the overall conjunctive management rules and the rules for administration and distribution of all the waters of the Big Lost River Basin? Are the rules totally independent of each other? If the Big Lost River rules do not describe procedures for curtailment, is the traditional function of curtailment in time of shortage not an option for administration in the Big Lost Basin, or do the more general conjunctive management rules fill gaps not discussed in the more specific Big Lost River rules?

2. Rule 50.04.c.ii. states that "water users who have requested mitigation and have water rights being called for that could be filled by augmentation described in Rule 50.04.c.i.

shall be provided with water by augmenting the natural flow to the extent of their water right or the amount of water described in Rule 50.04.c.i. "whichever is less." What is the meaning of the phrase "that could be filled by augmentation?" Is the reference to Rule 50.04.c.i. correct, or should the rule have referred to some other subparagraph?

3. Rule 50.04.c.ii. also states that mitigation shall be provided "with water by augmenting the natural flow to the extent of their water right or the amount of water described in Rule 50.04.c.i., whichever is less." Does this mean that only the amount of the surface water users water right need to be delivered to the stream, or is the entire 13 percent to be delivered to get the users water to him?

4. What is the meaning of Rule 50.04.c.i. when it discusses assumptions of augmented natural flow "by one-third ($1/3$) of the depletion during the first ($1/2$) of the period of time that any 1905 or earlier water right being called for can filled by the natural flow through October 15th of each year. And a subsequent statement that "natural flow will be assumed to be augmented by two-thirds ($2/3$) of the depletion during the second one-half ($1/2$) of this period each year."